



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1046

Appeal P-9500357

Ministry of Labour



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant made a request to the Ministry of Labour (the Ministry) for access to records pertaining to grievance proceedings against him.

The Ministry located three responsive records, all of which consist of grievance forms. Under section 28(1) of the Act, the Ministry contacted the three individuals who filed these forms to obtain their views on disclosure. Two of these individuals objected to disclosure, while one consented. The form pertaining to the individual who consented was disclosed, but access to the other two forms was denied pursuant to the following exemption in the Act:

- invasion of privacy - section 21(1).

The appellant filed an appeal of this decision with the Commissioner's office.

The Commissioner's office sent a Notice of Inquiry to the two individuals who did not consent to disclosure (referred to in this order as "the affected persons"), and also to the appellant and the Ministry. Because it appeared that the records could contain the appellant's personal information, the Notice of Inquiry raised the possible application of section 49(b) of the Act. This section provides an exemption which may be claimed for records containing a requester's personal information, in circumstances where disclosure would constitute an unjustified invasion of the personal privacy of individuals other than the requester.

Both affected persons are represented by the same solicitor, who submitted one set of representations on their behalf. Representations were also received from the Ministry.

The records at issue consist of the two grievance forms submitted by the affected persons.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have reviewed the records to determine whether they contain personal information, and if so, to whom the personal information relates. The records at issue do not mention the appellant in any way, nor do they contain any allegations about the appellant's behaviour or activities. For this reason, I am unable to conclude that they contain his personal information. In my view, each form consists of personal information pertaining to the individual who filed it.

As previously noted, section 49(b) of the Act can be raised for records containing a requester's personal information, in circumstances where disclosure would constitute an unjustified invasion of the personal

privacy of individuals other than the requester (Order M-352). I have just found that the records do **not** contain the appellant's personal information, and accordingly, section 49(b) does not apply.

Where a record does not contain the requester's personal information, but does contain the personal information of other individuals, the provisions of section 21 (the mandatory exemption initially raised by the Ministry) must be considered.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. In the circumstances of this case, the only exception to the section 21(1) exemption which could apply is section 21(1)(f), which permits disclosure if it would not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The appellant has not submitted representations. In his letter of appeal, he states that he requires the records in order to prepare for the grievance hearing, at which he has requested standing. He states that the denial of access amounts to a denial of "due process" because he cannot prepare a defence. This raises the possible application of section 21(2)(d), which applies where "the personal information is relevant to a fair determination of rights affecting the person who made the request".

The representations submitted on behalf of the affected persons state that:

... the appellant is not involved in any stage of the grievance procedure. Rather, this procedure is a private matter between OPSEU [the Ontario Public Service Employees Union], [the affected persons] and their employer. Moreover, neither of the grievance forms claims any relief against the appellant. The claim for relief on both forms is limited to their employer.

These representations are borne out by the contents of the records, and by the appellant's statement (referred to above) to the effect that he has **requested standing** at the grievance hearing.

Accordingly, I accept the submission of the affected persons in this regard. I find that, at this stage, the grievance proceedings do not pertain to the appellant's rights in the sense contemplated by section 21(2)(d). Therefore, I find that the factor favouring disclosure in section 21(2)(d) does not apply.

In the absence of any factors favouring disclosure, I find that the disclosure of these records to the

appellant in the particular circumstances of this case (where no proceedings have been instituted against the appellant) would constitute an unjustified invasion of personal privacy. Therefore the records are exempt under section 21(1) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
John Higgins
Inquiry Officer

_____ November 10, 1995